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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/814,158	04/01/2004	David Holley	24565.00	7364
37833	7590	08/30/2007	EXAMINER	
LITMAN LAW OFFICES, LTD. P.O. BOX 15035 CRYSTAL CITY STATION ARLINGTON, VA 22215			BRADEN, SHAWN M	
		ART UNIT		PAPER NUMBER
		3781		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/814,158	HOLLEY, DAVID	
	Examiner Shawn M. Braden	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7,9-12 is/are rejected.
- 7) Claim(s) 8 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 04/01/2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>04/01/2004</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,10 rejected under 35 U.S.C. 102(b) as being anticipated by Colombo (USPN 6,213,294).
3. With respect to claim 1, Colombo shows an outer container (206) having a bottom (210) and a continuous wall (209) extending up to a rim (214 area), an outer lid (208) adapted to seal an interior of said outer container from an exterior thereof, an inner container (12) comprising a bottom and a continuous wall extending up from said bottom to a rim, one of said bottom and said wall being perforated (20), said inner container further comprising a plurality of spacing tabs (14) extending away from an outer surface of said continuous wall, said spacing tabs engaging an interior surface of said wall of the outer container thereby providing a gap between the inner container and said outer container, and an inner perforated lid (just below element 30) adapted to engage said rim of said inner container (see figs. 7-8).
4. With respect to claim 10, Colombo shows a container having a generally rectangular bottom and four continuous sides extending up from said bottom to a rim, said container being perforated (20) on at least one of said sides and bottom, a perforated lid (just below 30) engageable with said rim for retaining food (12) in said

container, and a plurality of spacing tabs (14) extending out from said sides, said spacing tabs in all directions to provide a gap (fig. 8) between said container and any larger container (206) within which it is placed.

5. Claims 1-5,7,9, are rejected under 35 U.S.C. 102(b) as being anticipated by Shafer (USPN 1,023,531).

6. With respect to claim 1, Shafer shows an outer container (1) having a bottom and a continuous wall (clearly shown) extending up to a rim (18), an outer lid (9) adapted to seal an interior of said outer container from an exterior thereof, an inner container (12) comprising a bottom and a continuous wall extending up from said bottom to a rim, one of said bottom and said wall being perforated (20), said inner container further comprising a plurality of spacing tabs (14) extending away from an outer surface of said continuous wall, said spacing tabs engaging an interior surface of said wall of the outer container thereby providing a gap between the inner container and said outer container, and an inner perforated lid (just below element 30) adapted to engage said rim of said inner container (see figs. 7-8).

7. With respect to claim 2, Shafer shows the spacing tabs (14) are vertically oriented (fig. 2).

8. With respect to claim 3, Shafer shows the spacing tabs (14) extend up to maintain said inner container (12) a predetermined distance below said outer lid during use (fig. 2).

9. With respect to claim 4, Shafer shows said spacing tabs (14) extend up to maintain said inner container a predetermined distance below said outer lid during use

and said spacing tabs (14) extend down to maintain a predetermined bottom gap between said bottom of said inner container and said bottom of said outer container (fig. 2).

10. With respect to claim 5, Shafer shows said gap between said inner container and said outer container is approximately the same on all sides, including above and below said inner container (fig. 2).

11. With respect to claim 7, Shafer shows the spacing tabs (14) are formed integrally with the inner container.

12. With respect to claim 9, Shafer shows the inner container is perforated on all sides (all four sides are perforated) and the bottom (fig. 3).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title; if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. Claims 6,11,12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Colombo.

Either Colombo as applied to claims 1 discloses the claimed invention except for the size of the gap being 1.25 inches or an angle or 45 degrees. It would have been an obvious matter of design choice to choose these sizes, since such a modification would have involved a mere change in the size of a component. A change in size is generally

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recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Allowable Subject Matter

15. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shawn M. Braden whose telephone number is (571)272-8026. The examiner can normally be reached on Mon-Friday 9-6:30 est.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571)272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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